

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
)	
In the Matter of Protests of:)	DECISION
)	
First Choice Medical Supply)	CASE Nos: 2009-141 & 2009-144
Cardinal Health)	
)	
)	
Materials Management Office)	POSTING DATE:
IFB No. 5400001105)	
Statewide Term Contracts for)	
<u>Medical Supplies</u>)	December 29, 2009

This matter is before the Chief Procurement Officer (CPO) pursuant to letters of protest from First Choice Medical Supply (First Choice) and Cardinal Health (Cardinal). With this invitation for bids (IFB), the Materials Management Office (MMO) attempts to procure two statewide term contracts to supply state agencies and political subdivisions with medical supplies. Due to the thousands of items that may be needed, MMO structured the IFB to award the contracts based upon two elements of cost: 1) a market basket of 94 medical supplies used primarily by state agencies; and 2) a percentage discount off the market price for all remaining medical supplies contained in the respective bidders' catalogs. For the market basket of medical products, MMO listed actual manufacturers' products in use by State agencies and asked bidders to offer bid prices for the products listed or for equivalent products. For the remainder of the medical supplies offered in their catalogs, MMO asked bidders to offer their best percentage discount for those items. The two awards were determined based upon a composite score of the actual prices for the market basket products and the percentage discount for all other catalog items. After evaluating the bids received, MMO posted intents to award to Grove Medical Inc. (Grove) and Medline Industries Inc. (Medline).

In its protest letter, First Choice protested MMO's intent to award to Medline alleging that Medline's pricing did not provide the true retail cost or markup percent. Cardinal protested MMO's intents to award to both Grove and Medline alleging the following grounds:

- 1) "Substitute Products - Both Grove Medical and Medline substituted items on the Market Basket that have not been clinically approved for use by some of the State agencies..."
 - a. Specifically, Cardinal listed Strip Test Assure, Wing Classic Wet Wipe, Gloves, Qupid HcG Pregnancy Test, Sponge Gauze Curity, Bandage 1x3, HcG Test Icon as examples of Grove's substitutions, which were not approved as the result of a clinical review by the State. Cardinal further contended that the Sponge Gauze Curity and Bandage 1x3 substitutions were of lower quality.
 - b. Cardinal listed Incontinence Products and Gloves as examples of Medline's substitutions. Cardinal also alleged that the substituted Incontinence Products were inferior and that Medline did not provide accurate manufacturer information for the substituted items, which made comparison impossible.
- 2) As to the Pricing Unit of Measure, Cardinal alleged that "Medline failed to bid in a proper fashion, which may have resulted in an unfair advantage for Medline."
- 3) "Confidential Pricing Information Shared in Solicitation" - "The State's Solicitation included, among other things, the State's current quantity purchased for each item, along with (i) the cost of the item and the cost plus markup, or (ii) the State's total spend, from which the cost of the item could be easily discerned. Although this may have been an inadvertent disclosure, it served to inform all respective bidders of the current costing structure that the State utilizes with Cardinal Health, the incumbent supplier. This information provided the other bidders, including Grove Medical and Medline, with a competitive advantage over Cardinal Health."
- 4) After review of the market basket items for those that Cardinal considered clinically sensitive, Cardinal alleged, "these are high volume items and the use of substituted items by the awardees that have not been clinically approved, gave Grove Medical and Medline a significant advantage in the final calculation of bid total."
- 5) "The Cost + 0 quote offered by Medline does not identify its true costs and true mark-up on the items."
- 6) "The Catalog items basket of goods calculation utilizes \$1.8M as the basis to calculate a single mark-up for Part B figure in the final basket calculations. Because this represents 52% of the total figure, Cardinal Health questions the method used in arriving at this number..."
- 7) "Cardinal Health challenges the representation that two awardees have the ability to adequately and completely service the business and capabilities for the various punch outs that

will surely come. Cardinal Health has demonstrated, over the last 16 years, its ability to provide an exceptionally high level of service that the State's agencies have come to expect, and it is difficult to place a value on that."

In order to resolve the matters of protest, the CPO convened a hearing November 16, 2009. Appearing before the CPO were First Choice, represented by Guy Edwards; Grove, represented by John Schmidt, Esq.; Medline, represented by Michael Montgomery, Esq.; and MMO, represented by John Stevens, State Procurement Officer. Since Cardinal was not present, the CPO contacted Cardinal to inquire about its intentions. According to Eric Robinson, Assistant General Counsel for Cardinal, he received the hearing notice via email but did not consider it as an official notice of the proceeding. Consequently, after conferring with the parties present, the CPO proceeded to hear First Choice's protest but continued the hearing for Cardinal to a later date out of an abundance of caution.

The CPO convened the second hearing December 14, 2009. Appearing before the CPO were Cardinal, represented by Lawrence Melton, Esq.; First Choice, represented by Wade Mullins, Esq.; Grove, represented by Mr. Schmidt; Medline, represented by Mr. Montgomery; and MMO, represented by Mr. Stevens.

NATURE OF PROTEST

The letters of protest are attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On August 10, 2009, MMO published the IFB. [Ex. 1]
2. On August 25, 2009, MMO published Amendment 1. [Ex. 2]
3. MMO hosted a pre-bid conference on August 24, 2009.
4. On September 8, 2009, MMO published Amendment No. 2. [Ex.3]

5. On September 14, 2009, MMO published Amendment No. 3, which made substantial alterations to the solicitation. [Ex. 4]
6. MMO published Amendment No. 4 on October 2, 2009. [Ex. 5]
7. MMO opened the bids received on October 20, 2009.
8. On October 26, 2009, MMO posted its intent to award to Grove and Medline. [Ex. 7]
9. MMO posted a corrected intent to award to Grove and Medline on October 27, 2009. [Ex. 8]
10. On November 3, 2009, the CPO received the protest of First Choice. Cardinal's protest was received on November 4, 2009.

DISCUSSION

The CPO notes that this current solicitation is the result of a settlement agreement reached after MMO issued a comparable solicitation for statewide term contracts for medical supplies in 2008, which was also protested. In the settlement agreement, the parties agreed to allow the awards at that time but stipulated that the contracts would not be extended beyond one year and a resolicitation would be processed by MMO after consulting with the using agencies and the competitors in the hope of producing a better solicitation for medical supplies. According to the parties, they consulted with MMO during the interim period to advise MMO on the development of this solicitation. The CPO received no protests of this solicitation.

Prior to the hearing, Medline submitted Motions to Dismiss the protests of First Choice and Cardinal. Grove and MMO joined the motions. During the hearings, the CPO heard arguments regarding the Motions to Dismiss.

FIRST CHOICE'S PROTEST

Specifically, First Choice contended that Medline submitted a bid that did not provide the true retail costs and that falsely stated mark up prices of zero percent (0%). During the second day of hearings, Medline acknowledged it had indeed erred in its bid preparation and misstated its pricing.

Specifically, Mr. Montgomery explained that Medline had improperly used an internal cost sheet to provide the market basket information, which did not comport with the bid specifications. Marsha Corl of Medline confirmed Mr. Montgomery's statement.

The South Carolina Consolidated Procurement Code (Code) requires the award(s) or intended award(s) of a contract to the lowest responsive and responsible bidder(s) whose bid meets the requirements set forth in the invitation for bids. S.C. Code Ann. § 11-35-1520(10). To be responsive, the bidder must have submitted a bid which conforms in all material aspects to the IFB. S.C. Code Ann. § 11-35-1410(7). By Medline's own admission, Medline's bid was nonresponsive to the IFB. Therefore, Medline cannot be considered for award of the medical supplies contract, and the protest of First Choice regarding Medline's bid prices is granted. Since First Choice did not protest MMO's award to Grove, the First Choice's protest is resolved. Further, the Motions to Dismiss as to First Choice are now moot.

CARDINAL'S PROTEST

In Grounds 2 and 5 above, Cardinal also alleged that Medline failed to provide the true costs and true markup and that Medline quoted prices inconsistent with the unit of measure stipulated in the IFB. As stated above, Medline admitted that it was nonresponsive. Therefore, Cardinal's protest as to Medline on these grounds is granted. It is unnecessary to rule on Cardinal's additional protest issue against Medline (Grounds 1b).

With the matter against Medline decided, only Cardinal's protest against Grove remains, and the CPO finds as follows:

Grounds 1a and 4 Above

After announcement of the intent to award, Cardinal protests and alleges that Grove substituted items on the Market Basket that were not clinically approved. At the hearing, Cardinal further

protested the allowance of substituted products. The CPO finds that the Motions to Dismiss this allegation must be granted.

First, Cardinal fails to state a claim. It is fundamental that a protest must be based on either a requirement imposed by law or a procedure established in the solicitation. S.C. Code Ann. § 11-35-4310(3) (Authorizing CPO to grant relief “[i]f, after an award of a contract, it is determined that the solicitation or award is in violation of law...”)¹ Neither in its letter of protest nor at the hearing did Cardinal allege a violation of any duty. In fact, the amended IFB (Amendment 3) clearly allowed for the substitution of products stating, “Offerors will bid on the products listed as indicated on Attachment 2 (market basket) or an equal product. Space has been provided to offer an equal product.” (Emphasis added.) [Ex. 4, p. 13, Part III, Scope of Work/Specifications] Also in Amendment No. 3, in response to a question posed by the bidders regarding the specified strip tests Gulcometer Elite by Bayer, and asking “Can we offer an alternate Meter and Strips”, MMO responded, “Yes. Refer to page 13. The fifth paragraph of Section III, Scope of Work/Specifications” [Ex. 4, p. 5, Question and Answer No. 14] Question No. 15, asked similarly, “On the market Basket Spreadsheet can we provide Alternate Products?” MMO responded, “See response to question fourteen.” [Ex. 4, p. 5, Question and Answer No. 15] Further, the solicitation contains no requirement for clinical testing of substitute products.

Second, Cardinal’s protest of the IFB’s allowance of substituted products is untimely. “A prospective bidder...who is aggrieved in connection with the solicitation of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(a) within fifteen days

¹ See e.g. Protest of Blue Cross and Blue Shield of South Carolina, Case No. 1996-9 (“BCBS does not specify how Pearce’s bid is not in compliance, nor does it specify what parts of the law to which Pearce’s bid is not in compliance. The Panel grants Pearce’s motion to dismiss as vague the issue of Pearce’s bid violating age rating guidelines in federal law.”; Matter of: Alascom, Inc., 1993 WL 188688 (Comp. Gen.) ([O]ur Bid Protest Regulations require that protests include a detailed statement of the legal and factual grounds of protest, 4 C.F.R. § 21.1(c)(4) and that the grounds stated be legally sufficient...This requirement contemplates that protesters will provide, at a minimum, either allegations or evidence

of the date of issuance of the Invitation For Bids...or any amendment to it, if the amendment is at issue....” S.C. Code § 11-35-4210(1)(a). (Emphasis added.) “Any actual bidder...who is aggrieved in connection with the intended award...a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract. (Emphasis added) S.C. Code Ann. § 11-35-4210(1)(b). Clearly, Cardinal’s allegation concerns the solicitation process and thus it could have filed a protest in this regard within 15 days of MMO’s issuance of the solicitation and/or Amendment 3, which was issued on September 14, 2009. However, Cardinal failed to protest the solicitation or the amendments choosing instead to file its protest on November 4, 2009, which after MMO posted the intent to award. Since Cardinal filed well beyond the 15 day limit, this ground of Cardinal’s protest is dismissed as untimely filed.

The CPO notes that Cardinal did allege that two of Grove’s substituted products, Sponge Gauze Curity and Bandage 1x3, were of lower quality. These two issues were not dismissed by the CPO for failure to state a claim or as untimely. However, Cardinal ultimately withdrew these issues of protest during the hearing.

Grounds 3 and 6 Above

In Ground 3 above, Cardinal also protested that confidential pricing information was inadvertently disclosed in the solicitation. MMO published a historical record of state agencies’ spending for the market basket of products listed in the IFB on August 10, 2009 [Ex. 1] and in Amendment 3 on September 14, 2009. [Ex. 4]. In Ground 6, Cardinal stated, “The catalog items

sufficient, if uncontradicted, to establish the likelihood of...improper agency action...In this regard, our Regulations clearly state that we may summarily dismiss a protest...when on its face a protest does not state a valid basis of protest.”)

basket of goods calculation utilizes \$1.8 million as the basis to calculate a single mark-up for Part B figure in the final basket calculations. Because this represents 52% of the total figure, Cardinal Health questions the method used in arriving at this number” (used in the IFB). MMO published this information with issuance of Amendment 3 dated September 14, 2009. [Ex. 4, p. 18, Part VI, Award Criteria]. Both of these issues must be dismissed as untimely. As stated previously, Cardinal could have protested them during the solicitation phase of the procurement, but failed to do so.

Ground 7 Above

In the “Other Points” section of its protest letter, Cardinal wrote, “Cardinal Health challenges the representation that two awardees have the ability to adequately and completely service the business and capabilities for the various punch outs that will surely come. Cardinal Health has demonstrated, over the last 16 years, its ability to provide an exceptionally high level of service that the State’s agencies have come to expect, and it is difficult to place a value on that.” The CPO agrees that this issue is facially vague and fails to state a claim; therefore, the Motions to Dismiss must be granted. The Code requires that a protest “must set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.” S.C. Code Ann. § 11-35-4210(2)(b). This ground is so vague that it fails to alert the parties to the general nature of the grounds for protest.² Therefore, this issue must be dismissed.

DETERMINATION

The protests of First Choice and Cardinal as to Medline are granted and the award to Medline is canceled. The protest of Cardinal as to Grove is dismissed. Since the IFB requires two awards, the State must determine the second successful bidder, if any, and make an award. Accordingly, the procurement officer is instructed to proceed with this procurement in a manner consistent with both this decision and the Code.

Voight Shealy

R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

December 29, 2009

Date

Columbia, S.C.

² When the CPO requested Cardinal explain this allegation at the hearing, it could not articulate the issue.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2008 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).



REC'D BID CONTROL
NOV 3 '09 TU 9:20PM

State of South Carolina
Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

Reference: Intent to Award on October 26, 2009 to solicitation 540001105, Medical Supplies

In accordance with section 11-35-4210 of the South Carolina Consolidated Procurement Code, First Choice Medical Supply, LLC (FCMS) is responding to the Intent to Award to solicitation 5400001105 and hereby submits a protest to the award with intent to Medline Industries.

FCMS is aware that this bid opportunity was competitive on all levels. After a Freedom of Information Act (FOIA) request and a competitor bid tabulation analysis, FCMS believes Medline Industries has an unfair competitive advantage. Medline Industries manufactures their products; therefore, an accurate cost is undeterminable. FCMS believes due to the nature of Medline Industries self manufacture business, they do not provide true retail cost of the products bid.

FCMS believes the issue with the markup percent presented by Medline relates to the fact that most of Medline's product is their own private label and self brand. The cost of the product cannot be readily determined; it is what they say it is. The markup percent is not comparable to the other distributors that submitted pricing for this bid opportunity.

The other distributors generally use the same manufacturer to stock prices to determine the markup and resulting price to the State. These prices can be verified and audited with ease. FCMS believes that is not the case with Medline's pricing.

FCMS came in third on the bidding and therefore request relief in response to our protest. Specifically, we respectfully ask the State have Medline, Grove, and FCMS bid a representative sample of the 'all item usage' and have the three companies prepare a line item price bid. Additionally, we ask the State to use the existing market basket previously submitted and the new line item prices to compare the resulting bids.

FCMS looks forward to hearing from the State concerning this issue. Should you have any questions, please contact Guy Edwards at 800-809-4556, extension 202 or by email at guy.Edwards@fcms.com.

Very Respectfully,



April Kendall

Contract Specialist

First Choice Medical Supply, LLC



CardinalHealth

NOV 9 '09 MON 10:20PM

REC'D BID CONTROL

Cardinal Health
7000 Cardinal Place
Dublin, Ohio 43017
614.757.5000 main
614.757.2243 fax

www.cardinalhealth.com

November 4, 2009

VIA E-MAIL CORRESPONDENCE
AND CERTIFIED MAIL

State of South Carolina
Chief Procurement Officer
Materials Management Office
1201 Main Street
Suite 600
Columbia, SC 29201

Re: Protest of Intent to Award for Solicitation No. 5400001105

Dear Chief Procurement Officer:

Cardinal Health is in receipt of the State of South Carolina's Intent to Award (Solicitation No. 5400001105) to Grove Medical, Inc. and Medline Industries, Inc., dated October 26, 2009. This letter serves as Cardinal Health's formal written protest to such Intent to Award, pursuant to South Carolina Code, section 11-35-4210. We are filing this protest on several grounds, as detailed below with particularity, and appreciate your timely attention to these matters. As a result of this protest, Cardinal Health requests that the entire Solicitation No. 5400001105 be re-opened for bid and that all such bidders provide accurate information to enable the State of South Carolina to make the award based upon accurate, similar data.

Grounds for Protest

A. Substitute Products- Both Grove Medical and Medline substituted items on the Market Basket that have not been clinically approved for use by some of the State agencies. These substituted products provided a costing and pricing advantage to the awardees, resulting in a lower Grand Total (Bid Schedule A). Cardinal Health chose to submit our bid on the products requested, rather than submit a bid on alternative products that have not been approved, because of the extensive products review process we have conducted with the State over the last 16 years that Cardinal Health has serviced this contract. These substitute items could compromise patient outcomes and proper diagnosis, add costs to the system and result in any number of other adverse actions. Below, we have highlighted only a sampling of examples of these substitute products.

Grove Medical – substituted products

1. Strip Test Assure(Row 4, Bayer): Bid Item 560050(Arkray)- Glucose meter has not been approved as the result of a clinical review by the State.
2. Wing Classic Wet Wipe (Row 5, Covidien): Bid Item GM1594A(First Quality)- First Quality has not been approved by agency. In fact, Cardinal Health used to provide this product and a State agency conducted a clinical evaluation compared to Covidien. The State agency concluded that the Covidien products provided the best quality. The Covidien product is manufactured in South Carolina. The First Quality product is manufactured in PA.

3. Gloves (numerous rows, Cardinal & Sempermed): Bid Items(various subbed items)- Cardinal Health & Sempermed branded gloves are clinically preferred by the State agencies and the substituted items have not been approved as the result of a clinical review by the State.
4. Cupid HcG Pregnancy Test(Row 16, Stanbio Labs): Bid Item IHD/P-100(Immunostics)- The rapid test has not been approved as the result of a clinical review by the State for quality and accuracy.
5. Sponge Gauze Curity(Row 19, Kendall): Bid Item 441209(Kendall Dermacea)- The Kendall Dermacea line is considered industry-wide to be a lower level of quality and has not been approved as the result of a clinical review by the State.
6. Bandage 1X3(Row 46, J&J): Bid Item 3612(Dynarex)- The Dynarex line is considered to be a lower cost and quality alternative and has not been approved as the result of a clinical review by the State.
7. HcG Test Icon(Row 59, Beckman Coulter): Bid Item IDC-25(Immunostics)- Beckman Coulter is widely considered to be the gold standard preferred item and the substitute product has not been approved as the result of a clinical review by the State for quality and accuracy.

Medline – substituted products

1. Incontinence Products(Rows 3,7,14,68,88, Kendall): Bid Item(Medline Brand)- The Medline brand has not been approved as the result of a clinical review by the State. The Kendall brand is, however, clinically accepted and there is a marked quality difference between the two products with the Kendall brand being the superior product.
2. Gloves(numerous rows, Cardinal & Sempermed): Bid Items(Medline branded)- Cardinal Health & Sempermed branded gloves are clinically preferred by the State agencies and the substituted items have not been approved as the result of a clinical review by the State.
3. Additionally, Medline did not provide accurate product manufacturer information for the substituted items that they quoted. Because of this, Cardinal Health is not able to conduct any type of comparative analysis on that bucket of products, and undoubtedly, the State cannot conduct this comparative analysis either.

B. Pricing Unit of Measure (UM)

Medline quoted on row 9, a UM price of \$6.41. The State contract cost is \$125.00/case. This Medline quote is not consistent with the UM Quantity requested in the Solicitation and Cardinal Health challenges that Medline will honor this quoted price per case of 30 each. The bid does specify that offerors must adjust price to UM quantity being offered when quoting an alternative item. This item was an exact equivalent and Medline failed to bid in a proper fashion, which may have resulted in an unfair advantage for Medline.

C. Confidential Pricing Information Shared in Solicitation

The State's Solicitation included, among other things, the State's current quantity purchased for each item, along with (i) the cost of the item and the cost plus markup, or (ii) the State's total spend, from which the cost of the item could be easily discerned. Although this may have been an inadvertent disclosure, it served to inform all respective bidders of the current costing structure that the State utilizes with Cardinal Health, the incumbent supplier. This information provided the other bidders, including Grove Medical and Medline, with a competitive advantage over Cardinal Health in how to manipulate their product offering (see above) and price their bid against the current state.

D. Catalog Bucket – Clinical Sensitivity

Cardinal Health reviewed the items in the Catalog bucket that we identified as "Clinically Sensitive" from the categories outlined in Top Market Basket. We found 701 line items that have 9 month sales of \$414,248. This is in addition to the additional \$314,354 quoted by Grove Medical on the items in Top Market Basket (24.8% of the Cardinal Health proposed spend). And it is in addition to the additional \$326,219 quoted by Medline on the items in Top Market Basket (25.8% of the Cardinal Health proposed spend). There may also be other items that would need to go through the extensive clinical review process that we have conducted with the State and its agencies over the last 16 years, but we are not aware of all of these items, but we believe that we have shown enough to prove our case. The main point is that these are high volume items and the use of substituted items by the awardees that have not been clinically approved, gave Grove Medical and Medline a significant

advantage in the final calculation of bid total. This is especially crucial when the bid criteria was to select two low bidders in Grand Total buckets.

E. Other Points

1. The Cost + 0 quote offered by Medline does not identify its true costs and true mark-up on the items. The Solicitation does state that accurate actual costs need to be utilized in preparing a quote.

2. The Catalog items basket of goods calculation utilizes \$1.8M as the basis to calculate a single mark-up for part B figure used in final basket calculations. Because this represents 52% of the total figure, Cardinal Health questions the method used in arriving at this number. Additionally, since Medline doesn't accurately provide costs in their Market Basket bucket, their cost+5.50% does not ensure a more competitive end user price vs. Cardinal Health's cost + 19.9%.

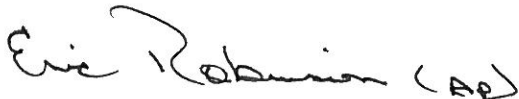
3. Finally, Cardinal Health challenges the representation that two awardees have the ability to adequately and completely service the business and capabilities for the various punchouts that will surely come. Cardinal Health has demonstrated, over the last 16 years, its ability to provide an exceptionally high level of service that the State's agencies have come to expect, and it is difficult to place a value on that.

For these points set forth above, it is Cardinal Health's belief that the Intent to Award issued to Grove Medical and Medline is premature, especially in light of the numerous product bids provided by the awardees for substitute products that have not been approved as the result of a clinical review by the State and the misleading information submitted by Medline as part of their bid. We believe that the State's agencies and those they serve are too important to provide inferior products for use in their treatment of patients. As a result, we are requesting that the entire Solicitation No. 5400001105 be re-opened for bid and that all such bidders provide accurate information to enable the State of South Carolina to make the award based upon accurate, similar data.

Please feel free to contact me for any additional information required or to discuss the Solicitation and our protest.

Very truly yours,

Cardinal Health 200, Inc.

A handwritten signature in black ink that reads "Eric Robinson" followed by the initials "(AR)" in parentheses.

Eric L. Robinson
Assistant General Counsel
Cardinal Health (Med Supply Chain)